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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/579,324	05/25/2000	Thomas Nello Giaccherini	HDM2000-1	7267

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EXAMINER	
LY, ANH VU H	
ART UNIT	PAPER NUMBER
2616	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/579,324	GIACCHERINI ET AL.	
	Examiner	Art Unit	
	ANH-VU H. LY	2616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *28 December 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-26* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-26* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. This communication is in response to Applicant's amendment filed December 28, 2007. Claims 1-26 are pending.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1-11 and 14-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aristides et al (US Patent No. 5,657,072) in view of Artigalas et al (US 2001/0014206 A1). Hereinafter, referred to as Aristides and Artigalas.

With respect to claim 1, Aristides discloses a method for use of pre-selected content by a recipient, comprising the steps of:

utilizing the excess capacity of a network by conveying data over said network during a period of less than maximum usage (Fig. 4, steps 100 and 102 and col. 7, lines 59-61);

receiving said data during said period of less than maximum usage (Fig. 4, steps 102 and 104 and col. 8, lines 12-13);

accumulating said data over an extended period of time (Fig. 4, step 104 and col. 8, lines 12-13).

Aristides does not disclose that said data including a plurality of different on-demand programming which may be viewed at said recipient's convenience and selectively retrieving one or more of said plurality of different on-demand programming by said recipient for on-demand use at a time after said extended period of time. Artigalas discloses that the movies are stored at the consumer's home and the user can then view any movie after paying a decoding fee (page 3, 53rd paragraph. Herein, the user can view the movies at his/her convenience after paying a fee). It would have been obvious to one having ordinary skill in the art at the time the invention was made to include storing on-demand video for view at an user's convenience in Aristides's system, as suggested by Artigalas, thereby members of the family can then view or listen to the recorded programs independently in different rooms.

With respect to claim 2, Aristides discloses that wherein the network includes a satellite (col. 4, line 1).

With respect to claims 3-8 and 14-15, Aristides discloses a satellite feed (Fig. 1). Aristides does not disclose that wherein satellite operates in LEO, MEO, HEO, and GEO and the network including a sub-orbital platform. However, LEO, MEO, HEO, and GEO satellites are well known in the art for carrying data communications including a sub-orbital platform. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include LEO, MEO, HEO, and GEO satellites including a sub-orbital platform for carrying data in Aristides's network thereby delivering communications to areas where terrestrial alternatives are unavailable, unreliable or simply too expensive.

With respect to claims 9 and 16, Aristides discloses that wherein the network includes a terrestrial wired network (col. 3, line 66 – col. 4, line 9).

With respect to claims 10 and 17, Aristides discloses that wherein the network includes a terrestrial wireless network (col. 3, line 66 - col. 4, line 14).

With respect to claim 11, Aristides discloses an apparatus (Fig. 1) comprising:

a gateway means (Fig. 1, elements 60 and 62) for transmitting a plurality of digitized packets of data;

a relay means (Fig. 1, elements 68 and 70) for receiving said plurality of digitized packets of data from said gateway means and for retransmitting during a time period when the total communications capacity of said relay means is not fully used (Fig. 4, step 102);

a receiver means (Fig. 5) for collecting said plurality of digitized packets of data which are transmitted from said gateway means;

said receiver means including a storage means (Fig. 5, element 206) for accumulating said plurality of digitized packets of data incrementally over an extended period of time; and

means for selectively retrieving and using one or more of said plurality of digitized packets of data after a generally full program has been accumulated (col. 8, lines 36-62);

Aristides does not disclose that said plurality of digitized packets of data provides a plurality of different on-demand programming which may be viewed at said recipient's convenience. Artigalas discloses that the movies are stored at the consumer's home and the user can then view any movie after paying a decoding fee (page 3, 53rd paragraph. Herein, the user

can view the movies at his/her convenience after paying a fee). It would have been obvious to one having ordinary skill in the art at the time the invention was made to include storing on-demand video for view at an user's convenience in Aristides's system, as suggested by Artigalas, thereby members of the family can then view or listen to the recorded programs independently in different rooms.

With respect to claims 18-19, Aristides discloses that in which the receiver means is located on and/or above the Earth's surface (Fig. 1).

With respect to claims 20-24, Aristides discloses that in which the receiver means is located in a fixed terminal, a portable terminal, a mobile terminal, a sub-orbital platform, satellite in orbit (Fig. 5 discloses a block diagram of a user interface unit. Herein, the unit can be hooked up to any system or to any device).

With respect to claims 25 and 26, Aristides discloses that prior to conveying said data over said network, transmitting said data from a terrestrial station to said satellite over said network during a period of less than maximum usage of said network (Fig. 1 discloses that the media server provides the data programs to the transceiver 66 for transmitting to the satellite system, col. 4, line 1, when the usage of the network is not maximized, otherwise, the satellite would not be able to receive full data programs when the network is maximized or overloaded).

3. Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aristides and Artigalas further in view of Picco et al (US Patent No. 6,029,045). Hereinafter, referred to as Aristides, Artigalas, and Picco.

With respect to claims 12 and 13, Aristides discloses an interactive entertainment network (Fig. 1). Aristides does not disclose that in which the receiver means is shielded to eliminate local radio frequency transmissions that could be used to make an unauthorized copy and/or tampter-proofed to thwart unauthorized copying. Picco discloses receiver means is shielded to eliminate local radio frequency transmissions and tamper-proofed to thwart unauthorized copying (Fig. 3, discloses that the set-top box is already shielded and tamper-proofed by the manufacturer). It would have been obvious to one having ordinary skill in the art at the time the invention was made to include the features of shielding and tamper-proofed of the receiver means in Aristides's network, as suggested by Picco, to eliminate interference and protect information.

Response to Arguments

4. Applicant's arguments filed December 28, 2007 have been fully considered but they are not persuasive.

Applicant argues in page 11 that Aristides fails to disclose a library of programming that may be individually selected by a recipient at a time of the recipient's choosing. Aristides offers no user selection, choice or control. Examiner respectfully agrees. However, Artigalas is relied upon for teaching selectively retrieving one or more of different on-demand programming by recipient for on-demand use at a later time and at recipient's convenience.

Applicant further argues in page 12 that Artigalas fails to disclose utilizing the excess capacity of a network by conveying data over said network during a period of less than maximum usage; accumulating during a period of less than maximum usage over an extended period of time; and receiving said data during said period of less than maximum usage. Examiner respectfully agrees. However, those cited limitations have been taught by Aristides.

Applicant argues in page 12 that the Examiner's rejection of claims 1-11 and 14-26 under section 103(a) is improper under the long-standing decisions of the Federal Courts. The Examiner may not selectively combine disparate elements of cited references to reject the Applicant's claims without a specific teaching in one of the cited references which teaches or suggests the entire combination.

Examiner respectfully disagrees. ***In re KSR vs Teleflex***, the Supreme Court upheld that as long as there is a clear articulation of the reasons why the claimed invention would have been obvious then the rejection under 35 USC 103 should be made explicit. Aristides discloses a method and system for transmitting data over a network during a period of less than maximum usage, accumulating and viewing data at a later time. Artigalas discloses a method and system for transmitting video, accumulating the transmitted video at a memory in the home of the consumer, and viewing the video at a consumer's convenience. It would have been obvious to one having ordinary skilled in the art at the time the invention was made to combine the teachings of Aristides and Artigalas to transmit video at a period of less than maximum usage thereby bandwidth can be used for any higher prioritized information.

Same arguments are presented by the Applicant in pages 17-26 for other pending claims. However, as ruled by the Supreme Court ***In Re KSR***, a rejection under 35 USC 103 should be

made explicit by combining prior art elements according to known methods to yield predictable results.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANH-VU H. LY whose telephone number is (571)272-3175. The examiner can normally be reached on Monday-Friday 7:00am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chi Pham can be reached on 571-272-3179. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

avl

/Chi H Pham/

Supervisory Patent Examiner, Art Unit 2616

3/27/08

Application Number	Application/Control No.	Applicant(s)/Patent under Reexamination	
	09/579,324	GIACCHERINI ET AL.	
	Examiner	Art Unit	
	ANH-VU H. LY	2616	